App. F. IX-4

1940

193 .

( )

Prisons

File No. 96-4

Serial Nos. 1

Previous References

Pris 4-38(1-2)
" 58-38(
" 12-37-(2)(3)

Later References.

Preserve

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. One only

Part B for May 1941

SUBJECT.

Procedure for submission of petitions for Mercy in death Sentence Cases.

WD 0573—GPB—22,500—12-9-39

B.B. Shamlekar.
1-5-41

No.R.F.518-40/Judl.

The Secretary to the Hon'ble
the Resident in Mysore.

The Superintendent,
Central Jail, Bangalore.
Through
The Chief Secretary to the Government of
His Highness the Maharaja of Mysore, Bangalore.
Dated Bangalore, the 1st May 1941.

Procedure for submission of petitions
for mercy in death sentence cases.

Sir,

I am directed to refer to letter from this Residency R.Dis.No.F.294-38/R.O.I., dated the 23rd February 1939, and forward a copy of the "Instructions regarding the procedure to be observed by the Residents in Hyderabad and Mysore for the submission of petitions for mercy from or on behalf of convicts under sentence of death and for dealing with applic tions for special leave to appeal to the Judicial Committee of the Privy Council" corrected up to the 1st March 1941.

2. I am also to enclose a copy of a letter from the Joint Secretary to the Governor General (Public) to certain Provincial Governments, No.231/5/40-G.G.(B), dated the 19th February 1941, with enclosure.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. P.K.Raman Nayar,

for SECRETARY TO THE RESIDENT.

INSTRUCTIONS REGARDING THE PROCEDURE TO BE OBSERVED BY THE RESIDENTS IN HYDERABAD AND MYSORE FOR THE SUBMISSION OF PETITIONS FOR MERCY FROM OR ON BEHALF OF CONVICTS UNDER SENTENCE OF DEATH AND FOR DEALING WITH APPLICATIONS FOR SPECIAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL. (CORRECTED TO 1st MARCH 1941).

1. A convict under sentence of death shall be allowed, for the preparation and submission of a petition for mercy, seven days after, and exclusive of, the date on which the Superintendent of the Jail has informed him of the confirmation by the High Court of the sentence passed on him, or of the dismissal by the Judicial Committee of the Privy Council of his application for special leave to appeal or of the breaking down of his application for special leave to appeal at any of the intermediate stages referred to in Instructions X(b), X(d) or XII(c) in case the convict has made no previous petition for mercy.

II. If the convict submits a petition within the above period it shall be addressed both to the Resident and to the Crown Representative and the execution shall be postponed pending receipt of their orders.

III. The petition shall be sent to the Resident in the first instance and if after consideration the Resident rejects it, it shall be forwarded to the Secretary to the Crown Representative. In case, however, the Resident decides to commute the sentence, the petition to the Crown Representative shall be withheld and intimation of the fact shall be sent to the petitioner.

IV. If the convict submits a petition after the period prescribed by Instruction I, it will be within the discretion of the Resident to consider the petition and to postpone execution, and also to withhold or not to withhold the petition addressed to the Crown Representative whether the Resident considers the petition addressed to him or not. In the following circumstances, however, the Resident shall forward such a petition to the Secretary to the Crown Representative whether he considers the petition or not, and shall simultaneously postpone execution pending the receipt of the orders of the Crown Representative:-

expired. In other cases a petition addressed to His Majesty or to the Secretary of State should be treated as addressed to the Crown Representative and forwarded to the Secretary to the Crown Representative. The Crown Representative may withhold any such petition.

IX. Petitions for mercy submitted on behalf of a convict under sentence of death shall be dealt with in the manner provided by these Instructions for dealing with a petition from the convict himself. A petitioner on behalf of a condemned convict shall be informed of the orders passed in the case. If the petition is signed by more than one person it will be sufficient to inform the first signatory. The convict himself shall also be informed of the fact that a petition has been submitted on his behalf and of the orders passed.

X. (a) If intimation is received from or on behalf of a convict, that it is intended to apply to the Judicial Committee of the Privy Council for special leave to appeal, the execution is postponed and a date, three weeks later, is fixed, before which proof must be furnished to the Resident or to an officer specially authorised in this behalf that the necessary papers, instructions and funds have been sent to a firm of solicitors in England by registered ordinary mail. The convict and his adviser are inform of the date so fixed and the papers and funds which must be sent; and also where the applicant indicates his intention of applying in forma pauperis of the procedure relating to such applications a set out in Instruction XII below. They are informed at the same time that unless the application for special leave is lodged in th Privy Council Office before a further date, fourteen weeks from th date of intimation, intimation will be received from the India Office, and the execution will not be further postponed.

Note (i).- If sentences of death have been passed on more tha one person in the same case, and if intimation is received from, o on behalf of, only one or more but not all of them of an intention to apply for leave to appeal to the Privy Council, the execution o the sentence shall be postponed not only in the case of the person

or persons from whom or on whose behalf, such intimation has been received but also in the case of the other person or persons from whom, or on whose behalf, no such intimation has been received.

Note (ii).- The necessary funds will be a minimum of 50 guineas if one Counsel is engaged, but will be 80 to 100 guineas if the record is bulky or more than one Counsel is engaged. The convict and his adviser should, therefore, be advised, on receipt of intimation of intention to apply for special leave, that 50 guineas (say Rs.700/-) must be sent by the date fixed, and that it is not unlikel that 30 to 50 guineas (say Rs.420/- to Rs.700/-) more will be required.

Note (iii).- The necessary papers will include two copies of th printed paper book and a certified copy and two further copies of the judgment etc., of the High Court on appeal.

Note (iv).- Whenever an intimation is received of the intention of a person condemned to death to apply to the Judicial Committee, three copies of the paper book and of the judgment of the High Court are forthwith addressed directly by the Resident to the Legal Adviser at the India Office, one copy of each being a certified copy.

(b) If proof is not furnished before the date fixed that the necessary papers, instructions and funds have been sent to a firm of solicitors in England, the execution is not further postponed unless the Resident is satisfied that the delay is due to no fault of the convict or his adviser. If, in any special case, the Resident for this reason allows an extension of the date for furnishing of proof, the further date within which proof must be furnished is intimated to the convict or his adviser, and the second date specified in the preceding clause is correspondingly extended.

(c) If proof is furnished before the date fixed, the convict or his adviser is required to intimate the name of the firm of solicitors to whom the papers, instructions and funds have been sent and the registered number of the package containing such papers instructions and funds, and the name of the firm, the date of the despatch

despatch of the papers, etc., the registered number of the package and the further date before which the application for special leave must be lodged in the Privy Council Office are communicated to the India Office by telegram directly by the Resident, a copy being sent to the Secretary to the Crown Representative for information.

Note.- If proof is furnished that the necessary papers and instructions, but less than the minimum funds referred to in X(a), Note (ii), have been sent to a firm of solicitors in England, the Resident shall forthwith telegraph to the India Office the names of the convict and such solicitors and shall ask for orders.

(d) After proof is furnished that the necessary papers, instructions and funds have been sent to England, the execution is except in cases under XII (c) postponed until intimation is received by the Resident from the India Office that the application for special leave has not been lodged in the Privy Council Office b the date fixed, or by such date as the Secretary of State may have decided to extend the date to, or that the application has been dismissed by the Judicial Committee.

XI. (a) On receipt of the telegram referred to in the Note to X(c) above enquiries will be made by the India Office of the prisoner's solicitors whether they are prepared to proceed with the case, and on receipt of a reply the Secretary of State will fix a date by which the application must be lodged at the Privy Council Office. This date will be communicated to the prisoner's solicitors and telegraphed to the Resident.

(b) When a petition has been lodged in the Privy Council, the India Office will inform the Resident of the fact by ordinary mail.

(c) The India Office will inform the Resident of developments in the Privy Council in any case which presents unusual features. This information should be communicated on receipt to the Secretary to the Crown Representative.

(d) The India Office will communicate to the Resident by telegram the result of an application to the Privy Council for special

special leave to appeal, and the Resident will immediately repeat the telegram to the Secretary to the Crown Representative. The India Office will also forward, in due course, a copy of the Order-in-Council to the Resident by ordinary mail.

XII.(a) In furnishing proof that he has despatched the necessary papers to a Solicitor in England, a petitioner who intends to make application in forma pauperis under Rule 8 of the Procedure Rules of the Judicial Committee of the Privy Council, shall also furnish proof of despatch of an Affidavit or Affirmation made by himself stating that he is not worth £25 in the world except his wearing apparel, accompanied by a certificate of Counsel that the petitioner has reasonable grounds of appeal. Thereupon proof of the despatch of funds as required by Instruction X(a) shall not be required.

(b) The Affidavit or Affirmation of means referred to in the preceding clause (a) shall, if made in the vernacular, be accompanied by a translation verified by affidavit or affirmation of the person making the translation.

(c) Such a petitioner and his advisers shall be informed that Solicitors in England are under no obligation to act in a case in forma pauperis. The Solicitor instructed by them must be instructed by registered ordinary mail and be required to inform the Assistant Solicitor, India Office, in writing, within twelve weeks of the date of intimation, whether he intends to act or not. If within this period the India Office receives no such consent, or receives intimation that the Solicitor instructed is unable to act, the Resident will be informed by telegram and the execution will not be further delayed.

XIII. In every case where the India Office has been informed of the postponement of execution of a sentence owing to the convict's intention to apply to the Privy Council for special leave to appeal, the India Office must also be informed in due course by telegram that the sentence has been carried out or has been commuted, as the case may be.

INSTRUCTIONS RELATING TO THE DUTIES OF SUPERINTENDENTS OF JAILS IN CONNECTION WITH PETITIONS FOR MERCY FROM OR ON BEHALF OF CONVICTS UNDER SENTENCE OF DEATH. (CORRECTED TO 1st MARCH 1941).

-:0:-

I. Immediately on receipt of a warrant for execution consequent n the confirmation by the High Court of a sentence of death or of intimation of the dismissal by the Judicial Committee of the Privy Council of his application for special leave to appeal or of the breaking down of his application for special leave to appeal at any of the intermediate stages, in case the convict has made no previous petition for mercy, the Jail Superintendent shall inform the convict concerned that if he desires to submit a petition for mercy it shoul be submitted in writing within seven days of the date of such intima tion.

II. If the convict submits a petition within the period of seven days prescribed by Instruction I it should be addressed both to the Resident and to the Crown Representative, and the Superintendent of the Jail shall forthwith despatch it to the Secretary to the Residen together with a covering letter reporting the date fixed for the execution, and shall certify that the execution has been stayed pend ing receipt of the orders of the Resident on the petition. If no reply is received within 15 days from the date of the despatch of the petition, the Superintendent shall report immediately to the Secretary to the Resident, drawing attention to the fact, but he shall in no case carry out the execution before the receipt of the Resident's reply.

III. If the convict submits a petition <u>after</u> the period prescribe by Instruction I, the Superintendent of the Jail shall at once forward it to the Resident, and at the same time report immediately the substance of it, requesting orders whether the execution should be postponed and stating that, pending a reply, the sentence will not be carried out. If such petition is, however, received by the Superintendent later than noon on the date preceding that fixed for the execution, he shall at once forward it to the Resident and

at the same time report immediately the substance of it, giving the date of execution and stating that the sentence will be carried out unless orders to the contrary are received.

IV. If the convict submits a petition for mercy addressed to His Majesty the King-Emperor or the Secretary of State, the Superintendent shall at once forward it to the Resident and shall at the same time report immediately the substance of the petition and the date of execution to the Resident.

He shall not further postpone execution unless specially ordered by the Resident.

V. In the event of its coming to the knowledge of the Superintendent at any time before the execution of the sentence that altogether exceptional circumstances have arisen which plainly demand a reconsideration of the sentence, he is at liberty, anything in the foregoing rules notwithstanding, to report the circumstances immediately to the Resident and ask for his orders and to defer execution till they are received.

VI. The Superintendent shall at once acknowledge the receipt of orders conveyed to him by the Secretary to the Resident regarding petitions of mercy.

P.K. Narayana Swami
Superintendent, Resident's Office,
Bangalore.

Copy of letter No.231/5/40-G.G.(B) dated the 19th February 1941 from the Joint Secretary to the Governor General (Public) to all Provincial Governments (except the Punjab, North-West Frontier Province and Sind), regarding decision of the Privy Council regarding Messrs.Nehra and Co. - Solicitors.

I am directed to enclose a copy of a telegram from the Secretary of State. As Mr. Nehra has failed to renew his practice certificate and the firm of Nehra and Co. cannot act in Criminal Applications before the Privy Council, I am directed to state that till further notice proof of despatch of papers etc. to Nehra and Co. should not be accepted as sufficient under Rules X or XII of the Instructions about Mercy Petitions and applications for special leave to appeal to the Privy Council.

---:0:---

Telegram I.W.C.

From

Secretary of State.

To

Viceroy.

Dated 15th and received 16th February 1941
at 7.30 a.m.

1716. Your telegram No.2682-G regarding R.S.Nehra Privy Council have declined to accept Nehra and Co. as Privy Council Agents on account of Nehra's failure to renew practice certificate. Linda solicitor left in charge of Nehra's firm has also failed to renew his own practice and a receiving order in bankruptcy has been made. Nehra and Co. cannot therefore act in criminal application. Punjab and N.W.F.P. have been informed in connection with pending application that in future proof of despatch under death sentence instructions and of papers etc. to Nehra & Co. should not be accepted until I inform those governments that Nehra & Co. are again Privy Council agents.

---:0:---

"C O P Y"

P. K. Narayana Swami

SUPERINTENDENT, RESIDENT'S OFFICE.